

REMARKS

The Office Communication dated October 28, 2011 states that the Amendment filed on April 19, 2011 is not fully responsive to the prior Office Action, on the grounds that the cancellation of claims 11-47, 51-54 and 56-62 does not leave any supposed errors in the original patent to be corrected. To remove any uncertainty, and to clarify the record, the subject matter of those canceled claims is being re-presented herein, as claims 63-110. Accordingly, the same errors are being corrected as those that were originally identified in the Declaration filed November 28, 2003.

Applicants respectfully submit that the currently pending claims do not attempt to recapture subject matter that was surrendered during the examination of the original patent. Claims 1-10 are the same as those appearing in the original patent, and thus cannot constitute recapture, for the reasons submitted in the Amendment filed April 19, 2011.

With respect to new claims 63-110, these claims are all narrower in scope than the claims that were effectively canceled during the examination of the original patent. As such, pending claims 63-110 do not attempt to recapture the subject matter than was surrendered during the original prosecution. Specifically, they are not as broad, or broader than, the claims that were effectively canceled to achieve allowance of the original patent.

Referring to the arguments on pages 18-20 of the Appeal Brief filed December 10, 2008, the point of reference for determining recapture is the claim from which the issued claim directly evolves, i.e. the claim that was effectively canceled during the original prosecution. It is not the issued claim itself. For the

reasons presented on pages 21-26 of the Appeal Brief, each of pending claims 63-110 is narrower in scope than the claims that were effectively canceled during the original examination of the patent.

In responding to these arguments, the Examiner's Answer dated August 5, 2009 refers to the three-step process described in MPEP §1412.02. However, as pointed out in the Reply Brief filed August 10, 2009, the Examiner's Answer overlooks the caveat set forth in MPEP §1412.02, I.C. Specifically, the reissue claims are directed to additional inventions/embodiments/species that are not covered by the original claims. For the reasons noted on pages 2-5 of the Reply Brief, currently pending claims 63-110 meet that exception to the rule against recapture.

Accordingly, it is respectfully submitted that claims 63-110 are directed to subject matter different from that set forth in the original claims that were effectively canceled during the examination of the patent. As such, there is no attempt on Applicants' part to recapture the subject matter that was surrendered during the original examination.

Reconsideration of the rejections of record, and allowance of all pending claims is respectfully requested.

Respectfully submitted,
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